IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 34269 of 2006(D)

PETITIONER:

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1. V.K.UMMER HAJI, SECRETARY,
   VADAKKU PARAMBU MAHDANUL ULOOM MADRASSA
   COMMITTEE, P.O.KADAMBOOR, MALAPPURAM DISTRICT.

2. K.P.USMAN, KALAKAPPARA HOUSE,
   VADAKKUPARAMBU, P.O.KADAMBODU,
   MANJERI-676 121.

BY ADV. SRI.ELVIN PETER P.J.
SRI.C.X.ANTONY BENEDICT

RESPONDENTS:

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1. THE DEPUTY DIRECTOR OF EDUCATION,
   MANJERI.

2. THE DISTRICT EDUCATIONAL OFFICER,
   MANJERI.

3. KAPPIKUZHIYAN MUHAMMED,
   KAPPIKKUZHI HOUSE, PANTHALLOOR, HILL ROAD,
   PANDIKKADAVU VIA, MALAPPURAM DISTRICT.

BY SR. GOVT. PLEADER SRI. T.T. MUHAMOOD
ADV. SRI.R.RAMADAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO 34269/06

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE CERTIFICATE OF REGISTRATION UNDER THE SOCIETIES REGISTRATION ACT XXI OF 1860 DT. 9.11.83

EXT.P2. COPY OF THE DOCUMENT NO.128A/1970 EVIDENCING THE PURCHASE OF 1 ACRE AND 2 CENTS OF LAND

EXT.P3. COPY OF THE MEMORANDUM OF ASSOCIATION OF THE COMMITTEE DT. 2.11.83

EXT.P4. COPY OF THE JUDGMENT DT. 11.10.02 IN A.S. NO. 166/1991 ON THE FILE OF THE ADDL. AND DISTRICT AND SESSIONS COURT, MANJERI

EXT.P5. COPY OF THE INTERIM ORDER DT. 24.10.04 IN C.M.P. NO.7/2003 IN S.A. 2/2003 OF THIS HON'BLE COURT

EXT.P6. COPY OF THE LETTER DT. 4.12.06 SUBMITTED BY THE PETITIONER BEFORE THE DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM

EXT.P7. COPY OF THE EXTRACT OF THE MEETING ELECTING THE 2ND PETITIONER AS THE NEW MANAGER

EXT.P8. COPY OF THE ORDER DT.11.1.07 IN CMP NO.7/03 IN S.A. NO.2/2003 OF THIS HON'BLE COURT

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NO. 34269 OF 2006

Dated this the 22nd day of August, 2007

J U D G M E N T

Petitioner No.1 is stated to be the Secretary of Mahdanul Uloom Madrassa Committee at Kadamboor in Malappuram district. Petitioner No.2 claims that he has been elected as the Manager of the school, which is being run by the Madrassa referred to above.

2. It appears that petitioners had submitted Ext.P7 request before the Assistant Educational Officer, Manjeri for approval of appointment of petitioner No.2 as manager. It is the admitted position that the managerial dispute between two groups is now pending consideration in R.S.A. 2/2003 before this Court. Petitioners represent one of the two rival groups. Respondent No.3 in this writ petition who obviously belongs to the other group has claimed that he is the Manager. In the second appeal referred to above, this Court had passed Ext.P8 order on January 11, 2007 directing the statutory educational authority to take a decision on the question of approval of appointment of the Manager in the school. Obviously the reference was to the claim made by the petitioners. It was further directed by this Court that "the school in the plaint schedule property shall be continued to be managed by the plaintiff/appellant (respondent No.3 in this writ petition) until further orders."

3. The grievance of the petitioners is that the controlling officer has been refusing to comply with the above direction issued by this Court in Ext.P8 order. The primary prayer is to issue an appropriate direction in this regard to the said officer. The other prayer is to issue a writ of mandamus or such other appropriate writ or direction to respondent No.2 to approve the selection of petitioner No.2 as the new Manager of the school.

4. Learned Government Pleader, after getting instructions, submits that the AEO, Manjeri has in fact passed orders in the matter aqs directed by this Court. However, he has taken the view that the question of approval cannot be considered since, there is a managerial dispute. Learned Government Pleader further submits that the officer noticed that both sides had failed to produce any evidence to show who owns the property of the school concerned and who is the real educational agency. But the learned counsel for the petitioners submits that the order has not been communicated to the petitioners so far.

5. The AEO, Manjeri, shall ensure that the order is communicated to the petitioners and respondent No.3 within 7 days from today. Learned Govt. Pleader shall communicate this direction to the officer concerned forthwith.

6. Learned counsel for the petitioners submits that the above order, which is reportedly passed by the AEO is in defiance of the direction issued in Ext.P8 order. I am unable to agree. If the petitioners are aggrieved by

the order passed by the officer concerned, it will be open to them to impugn the same before the appellate authority, who shall take a decision in the matter, at any rate, within three months from the date of institution of the appeal after affording sufficient opportunity of hearing to the parties concerned. The appellate authority shall take a decision in the matter in the light of the direction issued in Ext.P8 order. If any further clarifications are found necessary by any of the parties, the same can be sought in the second appeal. In any view of the matter, I do not find any reason why this writ petition should be retained on the file of this Court obviously for the further reason that prayer No.2 in the writ petition cannot be granted at all under any circumstances.

Therefore, the writ petition is closed with the above observations.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007